

## **Tribal Consultation Talking Points for Santee Sioux Consultation Meeting**

1. Consistent with the EPA's *Policy on Consultation and Coordination with Indian Tribes*, we are here to consult with the Santee Sioux Nation about the proposed Underground Injection Control (UIC) permits and related aquifer exemption.
  - a. We are aware that these proposed EPA actions potentially affect tribal interests.
  - b. We endeavor to ensure that consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to the EPA taking actions or implementing decisions that may affect tribes. The July 2019 letters state the EPA is interested in hearing from tribes about four topics:
    - i. The proposed actions
    - ii. The revised Environmental Justice (EJ) Analysis
    - iii. Treaty Rights and
    - iv. The EPA's plan for compliance with Section 106 of the National Historic Preservation Act.
  - c. These are the items we have identified, but we would also like to hear from the Santee Sioux Nation if there are additional topics they are interested in discussing. We are interested in hearing any concerns the Santee Sioux Nation may have about the proposed Dewey-Burdock project and the proposed UIC actions.
  - d. We are prepared to provide some background information about the proposed UIC permits, aquifer exemption and other draft documents available for review and comment.
  - e. We have sent multiple invitation letters to Tribes: May 2013, November 2015 and July 8, 2019.
2. Setting and Managing Expectations
  - a. We will be taking notes during our meeting 1) for the Administrative Record and 2) so that we can respond back to you on how we considered and addressed your input, comments and concerns during this consultation process.
  - b. You can provide additional information to the EPA after this meeting; that information will also be part of the record.
  - c. The EPA will take into account all input received through tribal consultation before issuing any final permit decision.
  - d. The UIC Program is authorized under the Safe Drinking Water Act to protect underground sources of drinking water by regulating injection wells.
  - e. While the Nuclear Regulatory Commission license and the South Dakota Large Scale Mine Permit regulates a wide scope of activities at the site, the UIC Permits impose requirements only on the injection wells.
3. Background
  - a. Class III permit
    - i. The EPA's regulatory role compared to the Nuclear Regulatory Commission and the South Dakota Department of Environmental and Natural Resources.
    - ii. The EPA's authority is limited to the protection of Underground Sources of Drinking Water.
  - b. Class V permit
  - c. Aquifer Exemption
  - d. Related documents available for review and comment:
    - i. The EJ Analysis
    - ii. The NHPA document

### iii. The Cumulative Effects Analysis

4. Executive Order 12898 directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.
  - a. The EPA's 2017 draft EJ analysis included a Study Area comprised of a 20-mile buffer zone measured from the approximate Dewey-Burdock Project Area Boundary.
  - b. The EPA conducted a preliminary screening process of the Study Area based upon demographic and environmental indicators, as well as a more targeted preliminary screening of an area comprised of a 5-mile radius around Edgemont, South Dakota, which lies within the Study Area.
  - c. Based on previous Tribal consultation discussions as well as comments received during the public hearings and public comment period, the EPA has expanded the Environmental Justice analysis to examine the proximity of the proposed project to the Black Hills as a sacred site and
  - d. The updated EJ analysis also includes additional information on various treaties.
  - e. Although we have expanded the scope of the EJ analysis beyond the permit area to include the Black Hills, our regulatory authority is limited to protection of USDWs.
  - f. We also have some limited regulatory authority to include mitigation measures for the protection of historic properties under the National Historic Preservation Act and to protect threatened or endangered species and critical habitat under the Endangered Species Act.
  - g. We would like to hear any concerns specifically related to the Santee Sioux Nation's interest in the Black Hills as a sacred site.
  - h. We would also welcome any input the Tribe would be willing to offer to assist the EPA in presenting an accurate picture of environmental justice issues related to the Black Hills.
5. The EPA Treaty Rights guidance provides affirmative steps for the Agency to take during tribal consultations when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the resource, may be affected by EPA's action.
  - a. We have received input on treaty rights from three tribes that provided comments during the 2017 public comment period (CRST, OST, SRST).
  - b. We would also like input from the Santee Sioux Nation's about any potential impacts our revised draft permitting actions may have related to treaty rights.
  - c. Specifically, the EPA seeks input on the following questions:
    - (1) Do treaties exist within the project area?
    - (2) What treaty rights exist in, or what treaty-protected resources rely upon, the project area?  
Among other things, have treaty-based groundwater rights in the project area been recognized by judicial decree or congressional settlement?
    - (3) How are treaty rights potentially affected by the revised draft permits?
    - (4) Any concerns you have related to treaty rights.
6. The EPA has a separate responsibility under section 106 of the National Historic Preservation Act (NHPA) to consult with tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking.
  - a. The EPA is seeking input on potential historic properties, including those of traditional

religious and cultural importance, within the Dewey-Burdock area of potential effect.

- b. At our November 2019 meeting you requested information about the NRC's tribal cultural surveys. We have that info available to share today.
- c. Are there any concerns related to historic properties that the Santee Sioux Nation would like to discuss?

7. We understand that the Santee Sioux Nation may raise issues in consultation that should be kept confidential and nonpublic.

- a. During the course of our consultation process, please identify early on any information that you would like to provide, but that you believe should remain confidential.
- b. We will explore options for keeping the information confidential in accordance with 36 CFR § 800.11(c).
- c. As we move forward with the consultation process, please be aware that any information you provide to the EPA in writing will become a part of the public record unless other arrangements are made to maintain confidentiality.
- d. It has to be a "historic property" under the ACHP regs, but that's not a formal classification. "Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria." 36 CFR 800.16(l)(1). "Eligible" includes properties that meet the National Register criteria, even if there hasn't been any formal finding to that effect.
- a. The thing to be sure that tribes understand when we are talking about withholding information under 36 CFR § 800.11(c) is that we have to consult with the Secretary of the Interior about each decision. There is a designated official for that purpose, but it's still not a trivial step. So that's why, if the tribe has a confidentiality concern, we'd like to talk about it with them early in the process and before they submit the information.